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10/588,938	08/08/2006	Kenneth John Woronoff	60,469-115 PUS1; OT-5256	9734
7590	03/07/2011		EXAMINER	
David J Gaskey Carlson Gaskey & Olds Suite 350 400 W Maple Road Birmingham, MI 48009			KRUER, STEFAN	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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In re Application of: Kenneth WORONOFF : DECISION ON PETITION
Appl. No. 10/588,938 : UNDER 37 CFR 1.181
Filed: August 8, 2006 :
For: DEVICE FOR MOVING A PLATFORM :
ALONG ELEVATOR GUIDE RAILS :
:

This is a decision on applicant's petition filed under 37 CFR 1.181 on June 28, 2010 to withdraw the objections to the specification, drawings and claims made in the final Office action mailed on April 28, 2010.

The petition is **DISMISSED**.

Applicant alleges that the examiner improperly objected to the specification and drawings on 1) the use of a hand-held drill which is disclosed as an alternative feature and was not claimed; and 2) the use of a pressurized actuator in lieu of an (electrical) drive motor was clearly shown in figure 5 of the drawings, and the operation of the pressurized actuator is clearly described on pages 5-6 of the specification. Applicant also alleges that the examiner improperly objected to claims 25-26 and 30-31 for the word "desired" when the examiner's preference would be to use the word "upward."

A review of the record shows that in the Office action dated June 19, 2008 the examiner objected to the disclosure as being incomprehensible with respect to the use of a hand-held drill in lieu of a drive motor, and the use of a pressurized actuator in lieu of an (electrical) drive motor. The examiner also objected to the drawings for failing to show an arrangement utilizing a hand-held drill to forcibly drive a gearing, and an arrangement to evacuate the pressurized fluid from the pressurized actuators to upwardly move a lower platform. In addition, the examinee objected to the term "desired" in claims 25, 26, 30 and 31 and preferred it changed to "upward."

37 CFR 1.83 on content of drawing specify that "*The drawing in a nonprovisional application must show every feature of the invention specified in the claims.*"

MPEP 608.02(d) specifies that “*Any structural detail that is of sufficient importance to be described should be shown in the drawing. (Ex parte Good, 1911 C.D. 43, 164 O.G. 739 (Comm'r Pat. 1911).)*”

A review of the specification indicates that in one embodiment, the moving mechanism for moving the platforms includes a drive motor (see page 3 of the specification). The specification also discloses the use of a hand-held drill as an equivalent structure of a drive motor for the moving mechanism as described in lines 11-13 on page 3 of the specification. A review of the claims showed that a hand-held drill was not included in any of the pending claims 18-30 and 32-34. Rule 37 CFR 1.83 set forth a drawing requirement for every feature of the invention specified in the claims. However, there is no drawing requirement for a purported feature of the invention not specified in the claims. Therefore, the objections to the disclosure and drawings on the use of a hand-held drill are improper and hereby withdrawn.

On page 5 of the specification, applicant describes yet another embodiment of the moving mechanism – using pressurized actuators. Claim 23 includes a limitation “*the moving mechanism comprises a pressurized actuator.*” Claim 30 includes a limitation “*a moving mechanism comprising a pressurized actuator between the first and second platforms and coupled to the platforms that sequentially urges the platforms toward and away from each other to cause incremental movement of the platforms in a desired direction along the guide rails;*” This feature is disclosed at the bottom of page 5 and continues on the top of page 6 of the specification as “*when the actuators 70 are in an expanded position and fluid is evacuated from the actuators to cause them to contract, the second platform 30 is pulled upward toward the first platform 28. Subsequently, when the actuators are filled with pressurized fluid they expand causing the first platform 28 to be pushed upward and away from the second platform 30, which remains in position because of the operation of the holding devices 36.*” There is a drawing requirement set forth in the rule 37 CFR 1.83 for the pressurized actuator specified in claims 23 and 30. A close look of the drawings, especially figure 5, indicates there is no showing of the claim feature “*sequentially urges the platforms toward and away from each other to cause incremental movement of the platforms in a desired direction along the guide rails.*” The arrangement to evacuate/fill the actuators with pressurized fluid and the structural details of the pressurized actuators are important to the understanding of how the platforms can be moved sequentially and incrementally and must be shown in accordance with MPEP 608.02(d). Therefore, the objections to the disclosure and the drawing on the pressurized actuator(s) are proper and hereby maintained.

MPEP 608 specifies that “*All amendments or claims must find descriptive basis in the original disclosure, or they involve new matter. Applicant may rely for disclosure upon the specification with original claims and drawings, as filed.*”

MPEP 608.01(g) states that “*... An applicant is ordinarily permitted to use his or her own terminology, as long as it can be understood... The description is a dictionary for the claims and should provide clear support or antecedent basis for all terms used in the claims. See 37 CFR 1.75, MPEP § 608.01(i)...*”

37 CFR 1.75. (d) (1) states that “*The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the*

description so that the meaning of the terms in the claims may be ascertainable by reference to the description (See § 1.58(a).)"

Regarding the objection on the claimed term "desired" in claims 25, 26, 30 and 31, applicant argues that this term is entirely consistent with the description and was used in the originally filed claims in this case. Applicant also asserts that he is entitled to be his own lexicographer, and the examiner should not impose his own personal preferences on applicant's choice of claim terms. A review of the specification shows that the term "desired" is used in lines 1-2 on page 2 as "*[The holding] devices allow the platforms to move in a desired direction and prevent movement in an opposite direction.*" Claims 25 and 30 includes the limitation of "*a holding device associated with each of the platforms, the holding devices allowing movement of the platforms along the guide rails in the desired direction and preventing movement of the platform in a direction opposite to the desired direction.*" It is clear that this claim language in claims 25 and 31 has full support or antecedent basis in the description found on page 2 of the specification, and in full compliance with the requirements set forth in MPEP 608.01 (g) and 37 CFR 1.75 (d)(1). It is also agreed that applicant can be his own lexicographer per MPEP 608.01 (g). While the term "desired" may be broad, it is not indefinite. Therefore, the objection on the term "desired" in claims 25, 26, 30 and 31 is hereby withdrawn.

In summary, the objections to the disclosure and drawings on the feature of hand-held drill, and the term "desired" in claims 25, 26, 30 and 31 are withdrawn. The objection to the disclosure and drawings on the feature of pressurized actuator is maintained. Since the application is currently in abandoned status, applicant's petition is dismissed as moot.

Any questions regarding this decision should be directed to Quality Assurance Specialist Lanna Mai at 571-272-6867.

Kathy Matecki, Director
Technology Center 3600
572-272-5250

lm: 3/3/11

LM